

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KYLE SUNDET, an individual,

Plaintiff,

v.

CHICAGO TITLE INSURANCE COMPANY, a foreign corporation and CHICAGO TITLE COMPANY OF WASHINGTON, a Washington corporation,

Defendants.

Case No. _____

NOTICE OF REMOVAL

Defendant Chicago Title Insurance Company (“CTIC”) hereby removes to this Court the Washington State action described below, currently pending in King County Superior Court.

I. NATURE OF THE CASE

1. Plaintiff filed this lawsuit in the Superior Court of Washington for King County on February 13, 2022, under the name and style of *Kyle Sundet v. Chicago Title Insurance Company et al.*, Case No. 22-2-01798-8 SEA. A true and correct copy of the Complaint filed in state court is attached hereto as Exhibit A. In the Complaint, Plaintiff named CTIC and Chicago Title Company of Washington (“CTCW”) as defendants. Compl. ¶¶ 2-3.

2. Plaintiff obtained a policy of title insurance from CTIC in conjunction with purchasing real property located at 4623 East F Street, Tacoma, Washington. Compl. ¶¶ 6-7.

NOTICE OF REMOVAL - 1

131971651.1

FOX ROTHSCHILD LLP
1001 FOURTH AVENUE, SUITE 4500
SEATTLE, WA 98154
206.624.3600

Plaintiff claims that he learned of an undisclosed encumbrance on the title of the property on August 23, 2021, which was later determined to include a City of Tacoma Complaint for derelict property, unpaid fines, and public utility fees. *Id.* at ¶ 8.

3. On or around August 25, 2021, Plaintiff submitted a claim to CTIC. *Id.* at ¶ 10. CTIC acknowledged receipt and confirmed that coverage was afforded for Plaintiff's claim. *Id.* at ¶¶ 11-12.

4. Plaintiff asserts causes of action against CTIC for (1) breach of contract, (2) violation of the Insurance Fair Conduct Act (“IFCA”), (3) violation of the Washington Consumer Protection Act (“CPA”), (4) injunctive relief and civil penalties under the CPA, and (5) insurance bad faith. *Id.* at ¶¶ 24-57. Plaintiff seeks recovery of contractual and extra contractual damages, including amounts paid in escrow at closing, amounts paid to lender for loan fees, loan payments and interest, amounts paid in connection with the property, loss of use funds, plus alleged extra-contractual damages allegedly caused by CTIC, alleged bad faith and violation of the CPA and IFCA, as well as attorneys’ fees and costs and treble damages. *Id.* at ¶¶ 29-30, 35-37, 43-47, 52-53, 55-57, Prayer for Relief. Plaintiff additionally seeks injunctive relief, with no less than \$125,000 penalty per violation. *Id.* ¶ 52.

5. On March 22, 2022, by stipulation and order, King County Superior Court dismissed CTCW, a Washington corporation, from the lawsuit, making CTIC the only remaining defendant. A true and correct copy of the March 22, 2022 Order is attached hereto as Exhibit C.

II. SUBJECT MATTER JURISDICTION

6. CTIC exercises its rights under 28 U.S.C. §§ 1332 and 1441 to remove this case from the Superior Court of King County, Washington to this Court. This Court has original jurisdiction over the underlying state court action under 28 U.S.C. § 1332. This action may be removed to this Court by CTIC pursuant to 28 U.S.C. § 1441 because there exists complete

1 diversity between Plaintiffs and CTIC following the state court's severance order and the amount
 2 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

3 **A. There Is Complete Diversity Between Plaintiffs and CTIC.**

4 7. In determining whether complete diversity exists, the Court considers the
 5 citizenship of all properly joined parties. 28 U.S.C. § 1441(b). Here, there is complete diversity
 6 of citizenship for the purposes of federal jurisdiction under 28 U.S.C. § 1332 between Plaintiffs
 7 and CTIC.

8 8. Plaintiff alleges he is a Washington resident, residing in King County. Compl.

9 ¶ 1.

10 9. A corporation is a citizen both of the state by which it has been incorporated and
 11 of the state where its principal place of business is located. 28 U.S.C. § 1332(c)(1). CTIC is a
 12 Florida corporation with its principal place of business in the State of Florida. Accordingly, for
 13 the purposes of diversity of citizenship under 28 U.S.C. § 1332, CTIC is a citizen of Florida and
 14 not a citizen of the State of Washington.

15 10. Because Plaintiff is a citizen of Washington and CTIC is a citizen of Florida,
 16 there is complete diversity of citizenship between the parties for the purposes of federal
 17 jurisdiction under 28 U.S.C. § 1332.

18 **B. The Amount in Controversy Exceeds \$75,000.**

19 11. Plaintiff's Complaint does not plead a specific amount of damages. CTIC must
 20 therefore prove the amount in controversy requirement has been met by a preponderance of the
 21 evidence. *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006). Plaintiff's
 22 demand, allegations, and relief requested prove that the amount in controversy in this case
 23 exceeds \$75,000.

24 12. Plaintiff alleges in his Complaint that he is insured under a CTIC policy and
 25 seeks damages that include amounts paid in escrow as closing costs, amounts paid to seller out-
 26 of-pocket including down-payment, amounts paid to lender for loan fees, loan payments and

1 interest, amounts paid in connection with the property, loss of use of funds tied up in this
 2 property. Compl. at ¶ 29; Prayer for Relief. Plaintiff in a recent demand sought a lump-sum
 3 payment of \$550,000 from CTIC. *See Declaration of Wendy E. Lyon* ("Lyon Decl."), Ex. A.
 4 *See Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (holding that a demand "is
 5 relevant evidence of the amount in controversy if it appears to reflect a reasonable estimate of
 6 the plaintiff's claim"); *Estenson v. GEICO Gen. Ins. Co.*, No. C13-05319-RBL, 2013 WL
 7 12128734, at *2 (W.D. Wash. July 25, 2013) (considering settlement letter as evidence of the
 8 amount in controversy). Plaintiff's demand shows that the amount in controversy exceeds
 9 \$75,000.

10 13. In addition to the contractual benefits, Plaintiff also seeks extra-contractual tort
 11 damages for alleged bad faith and violations of the CPA and IFCA. *Id.* at ¶¶ 35, 43, 56; Prayer
 12 for Relief. These purported extra-contractual damages are independent of and in addition to
 13 the policy benefits, thus increasing the amount in controversy even more. *See, e.g., Estenson v.*
 14 *GEICO Gen. Ins. Co.*, No. C13-05319-RBL, 2013 WL 12128734, at *2 (W.D. Wash. July 25,
 15 2013) (holding that potential damages for IFCA, CPA, and bad faith claims increase the
 16 amount in controversy); *Burke Family Living Tr. v. Metro. Life Ins. Co.*, No. C09-5388-FDB,
 17 2009 WL 2947196, at *3 (W.D. Wash. Sept. 11, 2009) ("The jurisdictional minimum may be
 18 satisfied by claims of general and specific damages . . .").

19 14. Treble damages are available under the CPA and IFCA, further increasing the
 20 amount in controversy. Compl. at ¶¶ 6.2-6.4, 7.5, 8.3, Prayer for Relief. The CPA provides for
 21 an award of treble damages of up to \$25,000 per violation. RCW 19.86.090. IFCA provides
 22 for an award of treble damages in "an amount not to exceed three times the actual damages."
 23 RCW 48.30.015(2). Potential enhanced damages under the CPA and IFCA are considered in
 24 the amount in controversy calculation. *E.g., Gierke v. Allstate Prop. & Cas. Ins. Co.*, No. C19-
 25 0071-JLR, 2019 WL 1434883, at *3 (W.D. Wash. Apr. 1, 2019) (including plaintiff's request
 26 for treble damages under IFCA when calculating the amount in controversy); *Wilson v. Geico*

Indem. Co., No. C18-226-RAJ, 2018 WL 3594474, at *2–3 (W.D. Wash. July 26, 2018) (denying motion to remand where plaintiff’s request for treble damages under the CPA and IFCA increased amount in controversy above jurisdictional threshold).

15. The amount in controversy further increases because Plaintiff requests an award of attorneys' fees and costs under the CPA and IFCA. Compl. at Prayer for Relief; *see also* RCW 19.86.090 (attorneys' fees recoverable under the CPA); RCW 48.30.015(3) (attorneys' fees recoverable under the IFCA). Attorneys' fees are included in the amount in controversy where, as here, they are recoverable under a statute. *See, e.g., Fritsch v. Swift Trans. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).

16. The amount in controversy further increases because Plaintiff requests injunctive relief carrying a penalty of no less than \$125,000 per statutory violation.

17. In total, the amount in controversy more likely than not exceeds the jurisdictional threshold of \$75,000.

III. REMOVAL IS TIMELY

18. This Notice is timely filed under 28 U.S.C. § 1446(b) and (c) because it is filed within thirty (30) days of CTIC's receipt of an "order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3).

19. In his Complaint, Plaintiff (citizen of Washington) asserted claims against both CTIC (citizen of Florida) and CTCW (citizen of Washington). Compl. at ¶¶ 2-3. Because the Complaint asserted claims against non-diverse defendants (CTCW), the 30-day removal period did not begin to run upon CTIC's receipt of the Order of Dismissal. *See* 28 U.S.C. § 1446(b)(3) (stating that the time for removal does not begin to run "if the case stated by the initial pleading is not removable").

20. On March 22, 2022, King County Superior Court entered an Order dismissing CTCW from Plaintiff's lawsuit. *See Exhibit C.* As a result of that Order dismissing claims

1 against CTCW, the non-diverse defendant is no longer party to Plaintiff's action against CTIC
 2 and complete diversity now exists between Plaintiff and CTIC. The King County Superior Court
 3 Order dismissing CTCW is therefore the first "order or other paper" from which it could be
 4 ascertained that the case had become removable on diversity jurisdiction grounds. *See* 28 U.S.C.
 5 § 1446(b)(3).

6 21. This Notice of Removal is filed within thirty (30) days of the March 22, 2022 King
 7 County Superior Court Order dismissing CTCW and less than one year after the action was filed
 8 in state court.

9 **IV. OTHER PROCEDURAL REQUIREMENTS ARE SATISFIED**

10 22. As required by 28 U.S.C. § 1446(a) and LCR 101, a copy of the Complaint and
 11 Civil Case Cover Sheet are attached as Exhibits A and B, respectively. The Complaint is being
 12 filed as a separate attachment in the electronic system and labeled as "Complaint" as provided by
 13 LCR 101(b)(1). In accordance with 28 U.S.C. § 1446(a), CTIC is filing contemporaneously with
 14 this Notice of Removal a Verification of State Court Records, which includes copies of all
 15 pleadings and documents from the Superior Court proceeding, besides the Complaint. In
 16 accordance with LCR 101(c), counsel for CTIC hereby verifies that the foregoing exhibits filed
 17 herewith and the documents attached to the Verification are true and complete copies.

18 23. As required by 28 U.S.C. § 1446(d), CTIC today served Plaintiffs, through their
 19 counsel of record, and the Clerk for the Superior Court of King County, State of Washington,
 20 with copies of this Notice of Removal.

21 24. CTIC has therefore satisfied the requirements for removal under 28 U.S.C. § 1441
 22 *et seq.*, and all applicable rules.

23 **V. CONCLUSION**

24 For all of the foregoing reasons, CTIC removes this case from the Superior Court of
 25 Washington for King County, where it is now pending, to this Court. CTIC respectfully requests
 26

1 that this Court assume jurisdiction over this matter to the exclusion of any further proceedings in
2 state court and place this action upon the docket of this Court, the same as if this case had
3 originally been filed in this Court.

5 DATED this 22 day of March, 2022.

6 FOX ROTHSCHILD LLP
7

8 *s/ Wendy E. Lyon*
9 Wendy E. Lyon, WSBA #34461

10 *s/ Jon S. Bogdanov*
11 Jon S. Bogdanov, WSBA #52857
12 1001 Fourth Avenue, Suite 4500
13 Seattle, WA 98154
14 Telephone: 206.624.3600
Facsimile: 206.389.1708
Email: wlyon@foxrothschild.com
JBogdanov@FoxRothschild.com

15 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I certify that I am a secretary at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

<u>Service List</u>	
Jo M. Flannery, WSBA #26086 RYAN, SWANSON & CLEVELAND, PLLC 1201 Third Avenue, Suite 3400 Seattle, WA 98101 Ph. (206) 464-4224 Email: flannery@ryanlaw.com <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / Email <input type="checkbox"/> Via over-night delivery

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 22 day of March, 2022, in Seattle, Washington.

Marina Krylov
Marina Krylov